



South Carolina Commission on Higher Education

Residency Workshop 2012

9:00 AM – 10:30 AM

Agenda

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| 9:00am | Welcome |
| 9:05am | Review of the Regulation and Scenarios |
| 10:15am | Current Issues/Questions |
| 10:30am | Adjourn |
| 10:40am | Scholarship and Grant Workshop |

After the final workshop on July 12, 2012, a copy of this presentation can be found at:

- [http://www.che.sc.gov/InfoCntr/SCRSWS/CHE Residency Workshop 2012.pdf](http://www.che.sc.gov/InfoCntr/SCRSWS/CHE_Residency_Workshop_2012.pdf)

Rules of Engagement

Throughout the morning you will be introduced to **ACTUAL** scenarios that have occurred within the past year dealing with SC Residency. The names of the institutions, students and parents involved have been changed.

We have a lot of material to cover, and want to make sure we allow time for questions at the end. If you have encountered a scenario similar to one of the presented cases, and have additional questions, please contact CHE staff after the presentation.

Review of Residency Regulation

Section 62-600

Rates of Tuition and Fees

- A. Resident classification is an essential part of tuition and fee determination, admission regulations, scholarship eligibility, and other relevant policies of the state. It is important that institutions have fair and equitable regulations that can be administered consistently and are sensitive to the interests of both students and the state.

What this means?

Each institution is responsible for making residency decisions according to guidelines provided by CHE. Institutions should take into account that they should be fair and consistent in their decisions.

62-602. Definitions

N. "Resident" for tuition and fee purposes is defined as an independent person who has abandoned all prior domiciles and has been domiciled in South Carolina continuously for at least twelve months immediately preceding the first day of class of the term for which resident classification is sought and for whom there is an absence of domiciliary evidence in other states or countries, notwithstanding other provisions of the Statute.

What does this Mean?

The twelve month residency period starts when the independent person establishes the intent to become a South Carolina resident per Section 62-605.

62-605. Establishing the Requisite Intent to Become a S.C. Domiciliary

C. For independent persons or the parent, spouse, or guardian of dependent persons, examples of intent to become a South Carolina resident may include, although any single indicator may not be conclusive, the following indicia:

- (1) Statement of full-time employment;
- (2) Designating South Carolina as state of legal residence on military record;
- (3) Possession of a valid South Carolina driver's license, or if a non-driver, a South Carolina identification card. Failure to obtain this within 90 days of the establishment of the intent to become a South Carolina resident will delay the beginning date of residency eligibility until a South Carolina driver's license is obtained;

62-605. Establishing the Requisite Intent to Become a S.C. Domiciliary

- (4) Possession of a valid South Carolina vehicle registration card.
Failure to obtain this within 45 days of the establishment of the intent to become a South Carolina resident will delay the beginning date of residency eligibility until the applicant obtains a South Carolina vehicle registration card;
- (5) Maintenance of domicile in South Carolina;
- (6) Paying South Carolina income taxes as a resident during the past tax year, including income earned outside of South Carolina from the date South Carolina domicile was claimed;
- (7) Ownership of principal residence in South Carolina; and
- (8) Licensing for professional practice (if applicable) in South Carolina.

D. The absence of indicia in other states or countries is required before the student is eligible to pay in-state rates.

College Scenario Written to CHE

“An independent student moved here on 08/2009, in possession of an out of state DL, and obtained her SC driver’s license 05/10/2011. She was driving her dad’s car here that she and it was registered out of state. In November 2011, he put the car in her name and she has given me a copy of the title in her name that shows proof of this. She got the car registered in her name at that time (November 2011). She can provide a copy of the registration for proof that the car was previously in her dad’s name. Can she be a resident for tuition and fee purposes now without using the full-time employment exception?”

Answer

- Yes. Initially, the student didn't have a vehicle in her name, so we would not hold that against her. Since the vehicle was transferred after the student began their clock on residency, we would allow the student 45 days from the date of transfer to register the vehicle here in SC. If she does this, we won't have to start her clock over.

Parent Scenario Written to CHE

Father works in Alaska over 50% time, Mother and children live in S.C. Father earns more than mother, so provides over 50% of support for children. (Due to the economy, he moved his business to Alaska.) Father says his job in Alaska is requiring him to maintain a Alaska DL.

Mother currently has SC DL. She has been full-time employed in SC since 2004. They will file joint SC income taxes claiming child as dependent in 2011. They own houses in both SC and Alaska. Student has attended and will graduate from SC High School.

Is the student a SC resident?

Answer

- We would consider student out of state until father changed over driver's license. He is providing majority of income for family and we would like to see his information considered in case as well.
- Additionally, the family is indicating through taxes that they would like to be considered jointly, so we would like the information on both of them to reflect SC.

62-602 Definitions

D. "Domicile" is defined as the true, fixed, principal residence and place of habitation. It shall indicate the place where a person intends to remain, or to where one expects to return upon leaving without establishing a new domicile in another state. For purposes of this section, one may have only one legal domicile. One is presumed to abandon automatically an old domicile upon establishing a new one. Housing provided on an academic session basis for students at institutions shall be presumed not to be a place of principal residence, as residency in such housing is by its nature temporary.

62-603 Citizens and Permanent Residents

C. In the case of divorced or separated parents, the resident status of the dependent person may be based
on the resident status of the parent who claims the dependent person as a dependent for tax purposes;
or
based on the resident status of the parent who has legal
custody or legal joint custody of the dependent person;
or based on the resident status of the person who makes payments under a court order for child support **and** at least the cost of his/her college tuition and fees.

What does this mean

- There are three ways that a child of divorced or legally separated parents can gain instate tuition and fees:
 1. The SC parent is a resident and claims the child on taxes; or
 2. There is a joint custody agreement and one of the parents is a SC resident; or
 3. The SC resident parent is responsible for paying court ordered child support AND the cost of college.

College Scenario Written to CHE

“Student’s parents are separated (not ‘legally’) and the student currently lives with the mom in California. Dad lives here in SC. He says he supports the daughter monthly and that after she finishes high school she will be moving here to live with him. He did not claim her on his taxes for 2011, but will be claiming her after she moves here.”

Is this student considered a SC resident?

Answer

- No. As of right now, there is not a legal document to establish divorce or separation. The only piece we would be able to use to connect the student to an independent person would be the taxes. Since she's being claimed out of state, she would not be a resident.

Examples of Documentation for Verification

- Document of legal separation
- Divorce Decree showing custodial agreement.
- Copies of income taxes.
- Copies of legal documentation of child support and determination of who shall pay cost of college.

Note: Documents from a notary public do not count as examples for verification

62-606. Maintaining Residence

- (1) Continuing to use a South Carolina permanent address on all records;
- (2) Maintaining South Carolina driver's license;
- (3) Maintaining South Carolina vehicle registration;
- (4) Satisfying South Carolina resident income tax obligation.

Individuals claiming permanent residence in South Carolina are liable for payment of income taxes on their total income from the date that they established South Carolina residence. This includes income earned in another state or country. (ex. Individual who crosses state lines to work daily)

Parent Scenario Written to CHE

“Student’s parents are missionaries and travel all over the world. The father provides all support for the daughter and she has attended school in Argentina but graduated through and accredited home school organization. The father has kept his SC Driver’s License, Bank account in Newberry, SC and permanent address at 500 S. Logan Street in Newberry, S.C. They stay at the Logan Street address when they are in the states between missionary jobs. Pays SC Taxes each year. Would the student be considered a SC resident for tuition purposes?”

Answer

- Yes. Family hasn't relinquished SC residency, based on required steps.

62-609 Exceptions

- A. Persons in the following categories qualify to pay in-state tuition and fees without having to establish a permanent home in the state for twelve months. Persons who qualify under any of these categories must meet the conditions of the specific category on or before the first day of class of the term for which payment of in-state tuition and fees is requested. Please note that these individuals do not automatically qualify for State Scholarships and Grants.

62-609 Exceptions

- (1)“. “Military Personnel and their Dependents”: Members of the United States Armed Forces who are permanently assigned in South Carolina on active duty and their dependents are eligible to pay in state tuition and fees. When such personnel are transferred from the State, their dependents may continue to pay in state tuition and fees as long as they are continuously enrolled. Such persons (and their dependents) may also be eligible to pay in state tuition and fees as long as they are continuously enrolled after their discharge from the military, provided they have demonstrated an intent to establish a permanent home in South Carolina and they have resided in South Carolina for a period of at least twelve months immediately preceding their discharge. Military personnel who are not stationed in South Carolina and/or former military personnel who intend to establish South Carolina residency must fulfill the twelve month “physical presence” requirement for them or their dependents to qualify to pay in state tuition and fees.

What does this mean

- Active duty military members stationed in SC and their dependents are eligible for instate tuition and fees. When they are transferred away, their dependents can maintain instate tuition and fee status as long as they remain continuously enrolled.

62-609 Exceptions Continued

(2) **“Faculty and Administrative Employees with Full-Time Employment and their Dependents:”** Full-time faculty and administrative employees of South Carolina state-supported colleges and universities and their dependents are eligible to pay in-state tuition and fees.

Note: The dependent does not have to attend the same SC Institution as their parent or guardian.

CHE's interpretation is that these students will need to establish domicile and take necessary steps to become SC residents before the State Scholarships and Grants can be awarded.

62-609 Exceptions Continued

(3) **“Retired Persons and their Dependents:”**

Retired persons who are receiving a pension or annuity who reside in South Carolina and have been domiciled in South Carolina as prescribed in the Statute for less than a year may be eligible for in-state rates if they maintain residence and domicile in this State. Persons on terminal leave who have established residency in South Carolina may be eligible for in-state rates even if domiciled in the State for less than one year if they present documentary evidence from their employer showing they are on terminal leave. The evidence should show beginning and ending dates for the terminal leave period and that the person will receive a pension or annuity when he/she retires.

62-609 Exceptions Cont'd

(4) **“Residents with Full-Time Employment and their Dependents:”** Persons who reside, are domiciled, and are full-time employed in the State and who continue to work full-time until they meet the twelve-month requirement and their dependents are eligible to pay in-state tuition and fees, provided that they have taken steps to establish a permanent home in the State. Steps an independent person must take to establish residency in South Carolina are listed in section 62-605 entitled (“Establishing the Requisite Intent to Become a South Carolina Domiciliary”).

Scenario Written to CHE

- An independent student will be transferring from one city in SC to another. He has been employed in Bellevue, SC full-time since August 2010. He has lived in Bellevue SC on a legitimate lease agreement since then as well (maybe even longer, but the lease agreement I have for him began sometime in October 2010).
- He has lived in the state for a number of years, even filing his taxes in SC as a full-year resident for the 2010 tax year. Student had an out of state DL. Student obtained a SC driver's license in October 2011.
- The student, though full-time employed currently, will be moving down here and will not be working while in school (at least not full-time). Is the student be eligible for instate rates?

Answer

- No. If the student is no longer working full-time, he could not continue to use the full-time employment exception. Student's must work for the entire twelve month period, provided they remain in school (don't graduate during that period).

62-602.(F) Full time employment

“Full time employment” is defined as employment that consists of at least thirty seven and one half hours a week on a single job in a full time status. However, a person who works less than thirty seven and one half hours a week but receives or is entitled to receive full time employee benefits shall be considered to be employed full time if such status is verified by the employer. A person who meets the eligibility requirements of the Americans with Disabilities Act must present acceptable evidence that they satisfy their prescribed employment specifications in order to qualify as having full time employment.

Examples of Documentation for Verification

- Copies of pay stubs – Evidence based on an income stream
- W-2
- Current letter of full-time employment

62-602. Definitions

“Independent Person” is defined as one in his/her majority (eighteen years of age or older) or an emancipated minor, whose predominant source of income is his/her own earnings or income from employment, investments, or payments from trusts, grants, scholarships, commercial loans, or payments made in accordance with court order. An independent person must provide more than half of his or her support during the twelve months immediately prior to the date that classes begin for the semester for which resident status is requested. An independent person cannot be claimed as a dependent or exemption on the federal tax return of his or her parent, spouse, or guardian For the year in which resident status is requested.

College Scenario Written to CHE

“We have a student who is applying for in-state tuition as an independent person, but in his paperwork he provided a copy of his financial aid documents which state that he is a dependent of his parents (who are in another state). We obviously saw that as conflicting information and wanted to know if we weigh this when making our determination. What do you think?”

62-602. Definitions

“Dependent Person” is defined as one whose predominant source of income or support is from payments from a parent, spouse, or guardian, who claims the dependent person on his/her federal income tax return. In the case of those individuals who are supported by family members who do not earn enough reportable income for taxation purposes, a dependent person can be defined as one who qualifies as a dependent or exemption on the federal income tax return of the parent, spouse, or guardian.

A dependent person is also one for whom payments are made, under court order, for child support and the cost of the dependent person's college education. A dependent person's residency is based upon the residency of the person upon whom they are dependent.

College Scenario Written to CHE

“We have a student who is transferring to our college next fall for whom there is a LIFE Scholarship question. The student did graduate from a SC High School but his parents are CA residents. They gave temporary guardianship to the student’s grandparents who live in the Midlands while student attended high school. Student’s FAFSA was completed this year by his father who is still a CA resident. The student is a dependent student.”

Is the student a resident?

Answer

- No. We would not recognize a document of temporary guardianship to be the same as a relinquishment of full parental rights. Residency wouldn't be based on grandparents.

62-607 Effect of Change of Residency

- A. Notwithstanding other provisions of this section, any dependent person of a legal resident of this state who has been domiciled with his/her family in South Carolina for a period of not less than three years and whose family's domicile in this state is terminated immediately prior to his/her enrollment may enroll at the in state rate. Any dependent person of a legal resident of this state who has been domiciled with his/her family in South Carolina for a period of not less than three years and whose family's domicile in this state is terminated after his/her enrollment may continue to receive in state rates, however, a student must continue to be enrolled and registered for classes (excluding summers) in order to maintain eligibility to pay in state rates in subsequent semesters. Transfers within or between South Carolina colleges and universities of a student seeking a certificate, diploma, associate, baccalaureate, or graduate level degree does not constitute a break in enrollment.

What does this mean?

- If you and your family have been here at least 3 years, and your family domicile has been terminated immediately prior to or any time after your enrollment, you can continue paying instate tuition and fees.

62-602.(E) Family's Domicile is Terminated

“Family's Domicile in this State is Terminated” is defined as an employer directed transfer of the person upon whom the student is dependent and is not construed to mean a voluntary change in domicile. Also included is a relocation of the person upon whom the student is dependent who is laid off through no fault of their own, e.g., plant closure, downsizing, etc., who accepts employment in another state prior to relocating

62-607 Effect of Change of Residency

- B. If a dependent or independent person voluntarily leaves the state, and information becomes available that would impact the existing residency status, eligibility for in state rates shall end on the last day of the academic session during which domicile is lost. Application of this provision shall be at the discretion of the institution involved. However, a student must continue to be enrolled and registered for classes (excluding summers) in order to maintain eligibility to pay in state rates in subsequent semesters.

Parent Scenario Written to CHE

“I have a question regarding residency for my son in high school who is planning to attend a SC College. We have lived in South Carolina for the past 14 years. My son will graduate from a South Carolina high school in May of 2013. My husband is currently considering a job transfer/ offer from a company in Georgia and we are trying to evaluate the impact this might have on our residency status and paying in-state tuition at the college. If my husband takes the job and we move to Georgia, but my son stays in South Carolina with friends to finish his last year of high school, can he still be eligible for in-state tuition if he is still listing a SC address at the time he enrolls in college?”

Answer

- No. Move doesn't appear to be forced.

62-604 Non Resident Aliens, Non Citizens, and Non Permanent Residents.

- A. Except as otherwise specified in this section or as provided in Section 62-609 (1) & (2), independent non citizens and non permanent residents of the United States will be assessed tuition and fees at the non resident, out of state rate. Independent non resident aliens, including refugees, asylees, and parolees may be entitled to resident, in state classification once they have been awarded permanent resident status by the U.S. Department of Justice and meet all the statutory residency requirements provided that all other domiciliary requirements are met. Time spent living in South Carolina immediately prior to the awarding of permanent resident status does not count toward the twelve month residency period. Certain non resident aliens present in the United States in specified visa classifications are eligible to receive in state residency status for tuition and fee purposes as prescribed by the Commission on Higher Education. They are not, however, eligible to receive state sponsored tuition assistance/scholarships.

What does that mean?

- Independent non-citizens and non-permanent residents of the United States will be assessed tuition and fees at the non-resident, out-of-state rate.
- Refugees, asylees, and parolees may be entitled to in-state residency once they have received their Green card and met the SC Residency requirement.
- Time spent waiting for permanent resident status (time prior to getting your Green card) does not count towards the 12 month physical presence requirement.
- Certain VISA classifications are entitled to in-state tuition and fees.
- Note: Student who are granted I-485 Pending status, as well as students in the US on Temporary Protective Status, are NOT green card holders and therefore cannot be considered SC Residents.

Parent Scenario Written to CHE

“We have resided in SC since August 2007 and my son is a Junior at a SC High School. We are Canadian citizens and have applied for Adjustment Of Status to Permanent Residency (Green Card) and it is in process; it means that our Adjustment of Status (I 485) is pending and our Green Card is in process. As we have applied for the Adjustment of Status (I 485) there is no need for us to have any non immigrant visa.

Please let us know if my son will be considered as a SC resident and qualify for instate tuition fees or not?”

Answer

- No. After discussions with the US Bureau of Citizenship and Immigration Services, it has been determined that students in the I-485 pending status may still be denied permanent legal residency. Because of this, we would not consider them to be legal permanent residents until they obtain their green card.

Approved Visa Classifications

Visa Classification Description

A-1	Highest diplomatic officers and their families
A-2	Staff under diplomatic officers and their families
E-2	Investor assisting in operating an enterprise who also invests a large amount of capital (and their families)
G-1	Principal representatives to international organizations (and their families)
G-2	Other representatives of foreign governments or international organizations (and their families)
G-3	Representatives of foreign governments (and their families)
G-4	Officers and employees of international organizations (and their families)

Approved Visa Classifications - Continued

Visa Classification	Description
H-1B	Temporary Professional Workers
H-2A	Temporary Agricultural Workers
H-2B	Temporary workers whose skills are needed in the U.S.
H-3	Trainees or participants in a special education exchange program
H-4	Dependents of H-1, H-2, H-3 employees
K-1	Fiancée or Fiancé of U.S. Citizens*
K-2	Child of Fiancée or Fiancé of U.S. Citizens*
L-1	Intra-company transfers, i.e., managers or executives who have worked abroad for branch of U.S. firm
L-2	Dependents of L-1 visa holder
N-8	Parent of alien child accorded special immigrant status
N-9	Child of an alien parent accorded special immigrant status

62-611. Incorrect Classification

- A. Persons incorrectly classified as residents are subject to reclassification and to payment of all non resident tuition and fees not paid. **If incorrect classification results from false or concealed facts, such persons may be charged tuition and fees past due and unpaid at the out of state rate.** The violator may also be subject to administrative, civil, and financial penalties. Until these charges are paid, such persons will not be allowed to receive transcripts or graduate from a South Carolina institution.
- B. Residents whose resident status changes are responsible for notifying the Residency Official of the institution attended of such changes.

62-612. Inquiries and Appeals

- A. Inquiries regarding residency requirements and determinations should be directed to the institutional residency official.
- B. Each institution will develop an appeals process to accommodate persons wishing to appeal residency determinations made by the institution's residency official. Neither the primary residency official nor appellate official(s) can waive the provisions of the Statute governing residency for tuition and fee purposes.

Topics for Additional Discussion

- Daning Legislation Update
- Re-identifying the Boundary Lines (SC vs. NC)
- Domicile
 - Checking in with Boomerang students
- Immigration Act
 - Reviewing the model

Daning Legislative Update

H 4641, By Daning, Knight, Crosby, Ott, et al **Summary: In-state tuition for military and dependents**

A BILL TO AMEND SECTION 59-112-50, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO IN-STATE TUITION RATES FOR MILITARY PERSONNEL AND THEIR DEPENDENTS UNDER CERTAIN CONDITIONS, SO AS TO REVISE THE CRITERIA UNDER WHICH VETERANS WHO ARE HONORABLY DISCHARGED AND THEIR DEPENDENTS MAY RECEIVE IN-STATE TUITION RATES.

*Status: Received 2nd reading in Senate on 5/29/2012 and awaits 3rd reading – **DID NOT PASS***

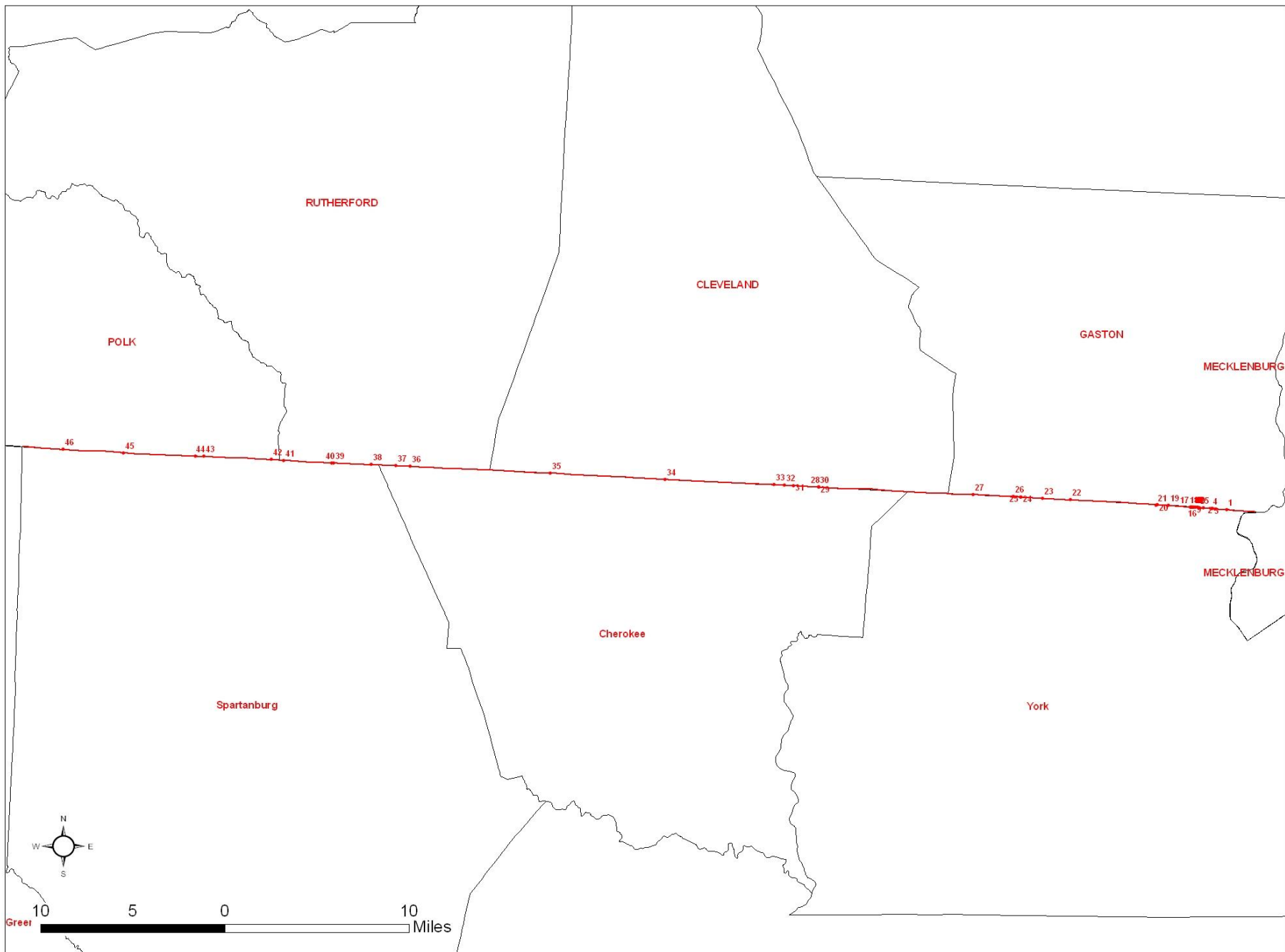
Daning Legislative Update

- "Section 59-112-50. (B) In addition to the provisions of subsection (A), a veteran of the Armed Services of the United States who has been honorably discharged, and their dependents, who are not otherwise eligible for in-state tuition rates, are entitled to receive in-state tuition rates at state institutions provided that within two years of the date of discharge, they enroll at a state institution and have evidenced an intent to establish domicile in South Carolina. These individuals are eligible for in-state tuition rates as long as they remain continuously enrolled at a state institution or transfer to an eligible institution during the term or semester, excluding summer terms, immediately following their enrollment at the previous institution, subject to provisions concerning such transfers as provided for in subsection (A)." - DID NOT PASS 2011-12 SESSION

RE-IDENTIFYING THE BORDER BETWEEN NORTH CAROLINA AND SOUTH CAROLINA

Re-Identifying the Borders

- Currently, SC and NC are in discussions to re-identify the border between the two states.
- In preliminary discussions, the Committee charged with re-identifying the border has determined the state line has been moved over the years.
- The correct line is being identified between the two states. As a result, some residents who believed they were residents of NC will become residents of SC, and vice versa.
- CHE has been charged with providing language to address the affected residents, with regards to tuition and fees and/or State sponsored scholarships and grants.
- Any suggested language would have to be approved by the SC General Assembly.



Re-Identifying the Borders

CHE is drafting language with the following identified specifications:

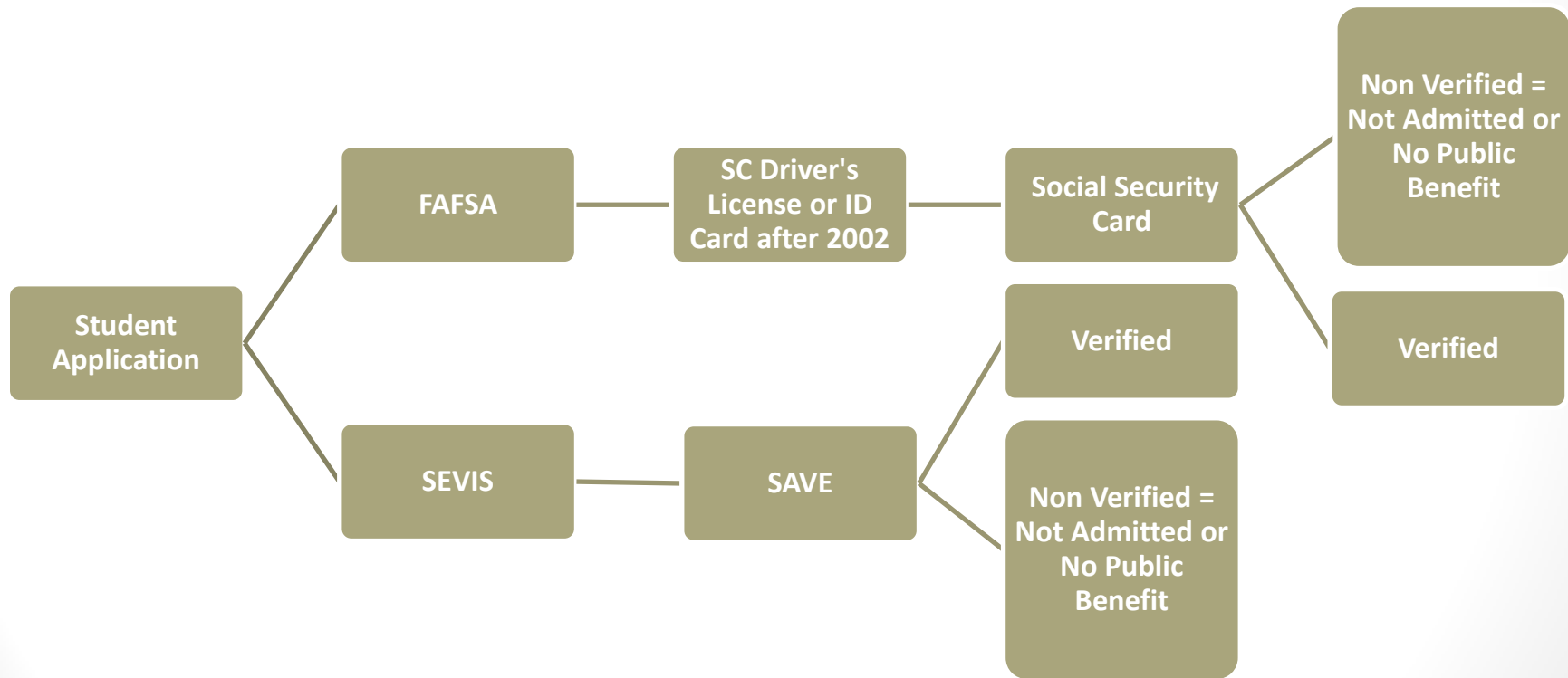
- Has a 10 year stipulation.
- Only impacts families who owned and inhabited property prior to the passing of the legislation.
- If ownership of property is transferred within the 10 year period, status may change (effect of death?).

Domicile Issue -Boomerang Students

- Students who have returned to their parents home after having been independent, for various reasons.
- Many do not have the financial resources to obtain their own domicile. Others simply choose not to place themselves in situations where they would have to pay their living expenses.
- Currently there is no exception to the domicile requirement in the residency regulation for these students. CHE has worked with institutions to assist with “creative” solutions
- How have you handled these cases?
- Is there a regulatory suggestion that would help address this issue?

SC Illegal Immigration Reform Act

Recommended Process for Verification



Items on the CHE Website that deal with SC Residency

<http://www.che.sc.gov/StudentServices/Residency/Residency.htm>

- Residency Law
- Residency Regulation (Approved as of June 26, 2009)
- Approved Visa Classifications
- Frequently Asked Questions
- Military Scenarios

Residency Contact Information

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Questions and Answers